IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.357 OF 1989

WITH

CIVIL APPLICATION NO.2582 OF 1998

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAILALBHAI VITHALDAS MISTRY & OTHERS

Versus

JAYENDRAKUMAR HIRALAL KHARAWALA

Appearance:

1. Civil Revision Application No. 357 of 1989
   MS. VASUBEN P. SHAH for Petitioners
   Petitioner Nos.2 and 3 served
   MR. K.V. SHELAT for Respondent
2. Civil Application No.2582 of 1998
   MR. K.V. SHELAT for Applicant
   MS. VASUBEN P. SHAH for Opponent No. 1
   ..... for Opponent Nos. 2-3

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 13/04/2005

COMMON ORAL JUDGEMENT

1. Feeling aggrieved by the judgement and order dated 27th January, 1989 passed by the Appellate Bench, Small Causes Court, Ahmedabad in Civil Appeal No.40 of 1982, the appellants, defendants in H.R.P. Suit No.4530 of 1977, have preferred the present Revision Application under Section-29(2) of The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Rent Act").

2. The suit premises is a residential house situated at Ellisbridge, Ahmedabad bearing Municipal Census No.447/2/3/4. The plaintiff is the landlord. The suit premises was leased to the defendant no.1 for a monthly rent of Rs.100=00. The plaintiff instituted the above referred H.R.P.Suit No.4530 of 1977 for recovery of vacant possession of the suit premises and the amount of arrears of rent due. It was alleged that the tenant, defendant no.1, had vacated the suit premises in or around the year 1972 and had unlawfully sublet or assigned the suit premises to his brother, one Kantilal Mistry. After the death of the said Kantilal Mistry, his widow and the son, defendant nos.2 and 3, continued to occupy the suit premises. Hence, the suit for eviction.

2.1 The suit was contested by the defendant no.1 by written statement - Exh.26. It was stated that the suit premises was leased to the brother of the defendant no.1, late Kantilal; that he, being the brother, was residing with the late Kantilal and that he and his family had moved to reside at Bombay since the year 1954 or 1955; since then, he had never resided in the suit premises; that the late father of the plaintiff was informed that the said Kantilal would be paying the rent and rent receipts be issued in the name of the said Kantilal; that the said Kantilal died in the year 1973; that the defendant nos.2 and 3, being the members of his family, had right to continue to occupy the suit premises; and that they were paying the rent regularly.

2.2 The defendant nos.2 and 3 contested the suit by written statement - Exh.33. They also stated that they were in possession of the suit premises since the year 1955 and as such, were protected sub-tenants; a direct tenancy was, therefore, established between the plaintiff and the defendant nos.2 and 3; and that they used to pay the rent to the plaintiff, but, the plaintiff did not issue the rent receipts.

2.3 The learned trial Judge, by the judgement and order dated 30th November, 1981, allowed the suit and passed decree for possession and arrears of rent due in favour of the plaintiff. The learned trial Judge held that the defendant no.1 was the tenant in the suit premises; that he had shifted his residence to Bombay since the year 1972 and had unlawfully assigned the suit premises to his brother, late Kantilal; and that the defendant no.1 was in arrears of rent.

2.4 Feeling aggrieved, the defendants preferred Civil Appeal No.40 of 1982 before the Appellate Bench, Small Causes Court, Ahmedabad. The Appellate Bench, by the judgement and order dated 27th January, 1989, confirmed the findings recorded by the court below and confirmed the decree for eviction on the ground of unlawful subletting and arrears of rent. Therefore, the present Revision Application.

3. Considering the evidence on record, both the courts below have recorded concurrent finding that defendant no.1 was the tenant in the suit premises. The defendant nos.2 and 3 were inducted in the suit premises by the defendant no.1 in or around the year 1972 after he shifted to Bombay with his family and that the defendants were in arrears of rent and that the defendant no.1 was the tenant in default. The defendant no.1 had forfeited the protection granted under Section-12(3)(a) of the Rent Act and also forfeited the protection granted under Section-12(3)(b) of the Rent Act.

4. Pending this Revision Application, the respondent-plaintiff has taken out the above Civil Application No.2582 of 1998. It has been stated that pending this Revision Application, stay against eviction was granted on usual terms i.e. subject to the petitioners' paying the mesne profits regularly. However, the petitioners have not paid the mesne profits since 1st August, 1981. The said statement has not been controverted by the petitioners.

5. In view of the above referred concurrent findings recorded by both the courts below and as pending this Revision Application, the petitioners have not complied with the condition imposed by this Court, no interference is warranted. The Revision Application is dismissed with costs. Rule is discharged. Interim relief is vacated.

The Civil Application stands disposed of.

[Ms.R.M.Doshit, J.]

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